

165 FERC ¶ 61,221
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP18-18-000

ORDER ISSUING CERTIFICATE

(Issued December 12, 2018)

1. On November 15, 2017, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authorization to modify, construct, and operate certain compressor stations, and meter and regulation facilities in Essex and Passaic Counties, New Jersey (Gateway Expansion Project) to provide an additional 65,000 dekatherms per day (Dth/day) of firm transportation service for two customers.
2. For the reasons discussed below, we will grant the requested authorizations, subject to certain conditions.

I. Background and Proposal

3. Transco, a Delaware limited liability company, is a natural gas company as defined by section 2(6) of the NGA³ engaged in the transportation and storage of natural gas in interstate commerce and subject to the Commission's jurisdiction. Transco's transmission system extends from Texas, Louisiana, and the offshore Gulf of Mexico area, through Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to its termini in the metropolitan New York City area.

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. pt. 157 (2018).

³ 15 U.S.C. § 717a(6) (2012).

4. Transco proposes to construct and operate the Gateway Expansion Project to provide an additional 65,000 Dth/d of firm transportation service for PSEG Power LLC (PSEG)⁴ and UGI Energy Services, LLC (UGI)⁵ (collectively, Project Shippers). Specifically, the Gateway Expansion Project will provide 54,000 Dth/day of firm transportation service to an existing interconnection at the Ridgefield meter and regulating station in Bergen County, New Jersey (Ridgefield M&R) from two receipt points on Transco's mainline in Mercer County, New Jersey: (i) Transco's existing Station 210 pooling point located at or near milepost 1776.79; and (ii) PennEast Pipeline Company, LLC's (PennEast) proposed interconnection with Transco located at or near milepost 1771.101 (collectively, Project Receipt Points).⁶ Transco will also provide 11,000 Dth/day of firm transportation service from the Project Receipt Points to an existing interconnection with PSEG at the Paterson meter and regulating station in Passaic County, New Jersey (Paterson M&R). Transco states that the additional firm natural gas transportation service on Transco's mainline is intended for its shippers' incremental supply needs beginning with the 2020/2021 winter heating season. Transco plans to place the new facilities in service no later than November 1, 2020.

5. To provide this service, Transco proposes to add 27,500 horsepower (hp) at its existing Compressor Station 303 in Essex County, New Jersey (Compressor Station 303), and make modifications at the existing Paterson and Roseland M&R stations in Essex County, New Jersey. Specifically, Transco proposes to:

- modify station and piping valves at its existing 27,500 hp rated Compressor Station 303 (CS 303) and install and operate an additional 33,000 hp electric motor driven compressor unit, including associated equipment and gas cooling, doubling the total certificated horsepower of the CS 303 from 27,500 hp to 55,000 hp;⁷

⁴ PSEG Power LLC, a Delaware limited liability company, is a wholly owned subsidiary of Public Service Electric and Gas Company.

⁵ UGI, the midstream and retail marketing subsidiary of UGI Corporation, is a Pennsylvania limited liability company engaged in the sale of electricity, natural gas, liquid fuels, and renewable energy products.

⁶ Transco notes that the construction of PennEast's proposed interconnection is not included in the scope of its Application, and should the interconnection not be constructed, there will be no impact on the need for the project or on the location of this receipt point. Application at 3 n.1.

⁷ The new electric compressor unit is rated at 27,500 hp but is capable of generating up to 33,000 hp. Transco requests authorization to operate the electric motor-

- replace the existing 12-inch-diameter headers, meter skid, building, and associated equipment at the Paterson M&R with two new 6-inch ultrasonic meter skids, a new meter and regulating building and associated equipment;
- install one new 36-inch-diameter mainline block valve with automation controls and actuator modification on an existing mainline block valve at the Roseland M&R; and
- install one electrical transformer at an existing electric substation in Essex County New Jersey (Roseland Electric Substation).

6. After executing a precedent agreement with PSEG, the anchor shipper, for 65,000 Dth/d of incremental firm transportation service, Transco conducted an open season for the Gateway Expansion Project from October 2, through October 20, 2017. As a result of the open season, PSEG agreed to reduce its transportation contract quantity to 54,000 Dth/d of firm transportation service to allow UGI to receive 11,000 Dth/d of firm transportation service. Transco then executed binding precedent agreements with PSEG and UGI for 15 and 17-year terms, respectively.

7. The estimated cost of the project is \$84.6 million. Transco proposes to establish an initial incremental daily recourse reservation charge of \$0.75275 per Dth and an incremental usage charge of \$0.01235 per Dth.

8. PSEG and UGI have elected to pay negotiated rates for service on the proposed facilities,⁸ and Transco states that it will file tariff records reflecting its negotiated rate agreements with the project shippers.⁹ Transco also requests that the Commission make an upfront determination on two non-conforming provisions contained within the service agreements regarding term extensions and the effective date of the agreements. Transco states that the project service agreements will conform in every other respect to Transco's Rate Schedule FT *pro forma* service agreement. Transco contends that the non-conforming provisions contained in the service agreements constitute permissible deviations from Transco's *pro forma* service agreement.

driven compressor unit in excess of 27,500 hp, provided that the total horsepower utilized at Compressor Station 303 does not exceed the station's proposed total certificated horsepower of 55,000 hp.

⁸ Application at 9.

⁹ *Id.* at 11.

II. Notice, Intervention, Protests, and Comments

9. Public notice of Transco's application was published in the *Federal Register* on December 6, 2017, with comments and interventions due December 21, 2017.¹⁰ Atlanta Gas Light Company; NJR Services Company; New Jersey Natural Gas Company, Municipal Gas Authority of Georgia; Transco Municipal Group; National Grid Gas Delivery Companies; Exelon Corporation; New Jersey Department of Environmental Protection; 350NJ; Judith K Canepa; Angela M Salisbury; Philadelphia Gas Works; New Jersey Conservation Foundation; Range Resources-Appalachia, LLC; PSEG Energy Resources & Trade LLC (PSEG Trade); Duke Energy Carolinas, LLC; Duke Energy Progress, LLC; Duke Energy Florida LLC; Piedmont Natural Gas Company, Inc.; and jointly, Food & Water Watch, Essex Greens Renewable Energy Campaign, Roseland Against the Compressor Station, and New Jersey Sierra Club (collectively, Community Groups) filed timely, unopposed motions to intervene.¹¹

10. On January 18, 29, and February 2, 2018, the New Jersey Board of Public Utilities, Yervant Dermenjian (a resident of Roseland), and the Borough of Roseland, respectively, filed untimely motions to intervene. Noting that the late-filed motions to intervene were filed before the Commission announced its new policy governing late interventions in *Tennessee Gas Pipeline Company, L.L.C.*,¹² the late motions to intervene are granted.¹³

11. PSEG Energy Resources & Trade LLC filed comments in support of the proposed project. Numerous residents in Essex and Passaic Counties, who own property near, or reside in, the vicinity of the project, filed comments expressing concerns about the proximity of the project to their residences, businesses, and schools. They also raised general concerns over health impacts from compressor station emissions; safety concerns from leaks, rupture, and emergency responder training; environmental concerns that the project would result in contaminant impacts on the nearby wetlands, wildlife, and soils; and concerns about noise and traffic from the construction of the proposed facility.

¹⁰ 82 Fed. Reg. 57,594 (2017).

¹¹ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2018).

¹² *Tennessee Gas Pipeline Co., L.L.C.*, 162 FERC ¶ 61,167, at P 51 (2018) (noting that the Commission will be less lenient in the grant of late interventions that do not comply with our regulations) (citing 18 C.F.R. § 385.214(b)(3) and (d) (2017)).

¹³ 18 C.F.R. § 385.214(d) (2018).

12. The environmental concerns raised in the comments are addressed in the environmental assessment (EA) prepared by Commission staff or further discussed in the environmental section below.

III. Discussion

13. Since Transco's proposed facilities will be used to transport natural gas in interstate commerce, subject to the Commission's jurisdiction, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹⁴

A. Application of Certificate Policy Statement

14. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁵ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new natural gas facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain-in evaluating new pipeline construction.

15. Under this policy, the threshold requirement for applicants proposing new projects is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the construction of the new natural gas facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits

¹⁴ 15 U.S.C. §§ 717f(c) and (e) (2012).

¹⁵ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

outweigh the adverse effects on economic interests will the Commission proceed to consider the environmental analysis where other interests are addressed.

16. The Commission has determined, in general, that when an applicant proposes an incremental rate for service utilizing proposed expansion capacity that is higher than the generally applicable system rate, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing customers.¹⁶ As discussed further below, Transco's proposal to establish an incremental recourse rate for firm transportation service using the Gateway Expansion Project facilities, which is higher than the existing applicable system recourse rate, eliminates the risk of existing customers subsidizing the expansion. Accordingly, we find that Transco's proposal satisfies the requirement that it financially support the project without relying on subsidization from its existing customers.

17. We also find that the proposed project will not adversely affect service to Transco's existing customers, or to other pipelines and their captive customers. Transco's proposal will not degrade service to existing customers because the project is designed to provide the additional firm transportation service while meeting Transco's existing contractual obligations. In addition, the project facilities are predicted to reduce the overall fuel usage.¹⁷ We also find that there will be no adverse impact on other pipelines in the region or their captive customers; the project shippers – PSEG and UGI – will use the project's capacity to serve the incremental growth requirements of their markets, not to displace existing service providers. Finally, no pipelines or their captive customers have objected to Transco's proposal.

18. In order to minimize impacts on landowners, construction will occur primarily on existing rights-of-way and within the footprint of Transco's existing facilities. As further discussed in the environmental section below, we find that implementation of mitigation measures, such as limiting idling of construction vehicles to reduce exposure to diesel exhaust, will adequately minimize temporary adverse construction effects on nearby residents and the surrounding communities.

19. Ted Glick, Susan Mullins, the Borough of Roseland, and the Community Groups filed comments on the need for the project. The Community Groups claim that not enough information has been provided to the public regarding the need for the project, and that such information is required before the Commission may issue a certificate of

¹⁶ See, e.g., *Dominion Transmission, Inc.*, 155 FERC ¶ 61,106, at P 15 (2016); *Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,155, at 61,552 (2002).

¹⁷ Application at 9, Ex. Z-1.

public necessity and convenience.¹⁸ They cite a recent Union of Concerned Scientists' report finding that New Jersey has an over-reliance on natural gas that may result in consumers bearing the financial risk of price swings.¹⁹ They also express concern that as the demand for and price of natural gas remains low, the additional capacity proposed by applicants will be used to transport gas from the Marcellus Shale to out-of-state markets and export facilities.²⁰

20. The Certificate Policy Statement established a policy under which the Commission will allow an applicant to rely on a variety of relevant factors to demonstrate need, rather than continuing to require that a percentage of the proposed capacity be subscribed under long-term precedent or service agreements.²¹ These factors may include, but are not limited to, precedent agreements, demand projects, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market.²² The Commission will consider all such evidence submitted by the applicant regarding need. Nonetheless, the Certificate Policy Statement made clear that, although precedent agreements are no longer required to be submitted, they are still significant evidence of demand for the project.²³ As the court stated in *Minisink Residents for Environmental Preservation & Safety v. FERC*, and again in *Myersville Citizens for a Rural Community, Inc. v. FERC*, nothing in the policy statement or in any precedent construing it suggest that it requires, rather than permits, the Commission to assess a project's benefits by looking beyond the market need reflected by the applicant's existing contracts with shippers.²⁴ Moreover, it is current Commission policy to not look beyond

¹⁸ Food & Water Watch, Essex Greens Renewable Energy Campaign, Roseland Against the Compressor Station, and New Jersey Sierra Club's December 21, 2017 Motion to Intervene at 2.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Certificate Policy Statement, 88 FERC at 61,747.

²² *Id.* at 61,747.

²³ *Id.* at 61,748.

²⁴ *Minisink Residents for Env'tl. Pres. and Safety v. FERC*, 762 F.3d 97, 112 n.10 (D.C. Cir. 2014) (*Minisink*); see also *Myersville Citizens for a Rural Cmty., Inc., v. FERC*, 783 F.3d 1301, 1311 (D.C. Cir. 2015) (*Myersville*).

precedent or service agreements to make judgments about the needs of individual shippers.²⁵

21. Transco has entered into long-term precedent agreements for firm service with two shippers, PSEG and UGI, for transportation service using the full capacity of the project over 15 and 17 year terms. The Commission may reasonably rely upon a binding contract that uses all of the project's capacity to evince both market need and proof that the project will be self-supporting.²⁶ Further, ordering paragraph (B) of this order requires that Transco file a written statement affirming that it has executed contracts for service at the levels provided for in their precedent agreements prior to commencing construction. Given the substantial financial commitment required under these contracts by project shippers, we find that these contracts are the best evidence that the service to be provided by the project is needed in the markets to be served. We also find that end users will generally benefit from the project because the gas infrastructure development will enhance the pipeline grid by providing additional transportation capacity connecting sources of natural gas to markets in New Jersey.

22. We are unpersuaded by the studies submitted by commenters to show that there is insufficient demand for the project²⁷ and by assertions that the Commission is required to examine the need for pipeline infrastructure on a regional basis. Projections regarding future demand often change and are influenced by a variety of factors, including economic growth, the cost of natural gas, environmental regulations, and legislative and regulatory decisions by the federal government and individual states. Given this uncertainty associated with long-term demand projections, where, as here, it is demonstrated that specific shippers have entered into precedent agreements for project service, the Commission relies on those agreements to find that the project is needed.

23. Based on the benefits the project will provide and the minimal adverse effect on existing customers, other pipelines and their captive customers, and landowners and surrounding communities, we find, consistent with the criteria discussed in the Certificate Policy Statement and NGA section 7(c), that the public convenience and necessity requires approval of Transco's proposal, as conditioned in this order.

²⁵ *Transcontinental Gas Pipe Line Company, LLC*, 164 FERC ¶ 61,101, at P 18 (2018).

²⁶ *Twp. of Bordentown, N.J. v. FERC*, 903 F.3d 234, at 262-63 (3d Cir. 2018).

²⁷ Community Groups Intervention at 2.

B. Rates**1. Rates**

24. Transco proposes to establish initial incremental recourse rates under Rate Schedule FT for firm service using the incremental capacity created by the project facilities. Specifically, Transco proposes an initial incremental daily recourse reservation charge of \$0.75275 per Dth and an incremental usage charge of \$0.01235 per Dth. The proposed recourse reservation charge is based on a Year 1 cost of service of \$17,859,080 and annual billing determinants of 23,725,000 Dth.²⁸ The proposed cost of service reflects Transco's onshore depreciation rate (including negative salvage) of 2.61 percent and the pre-tax rate of return that underlies Transco's settlement rates approved in Docket No. RP01-245-000, et al.²⁹ The rates also include \$78,799, which Transco states represents the cost of storage required to provide no-notice transportation under Rate Schedule FT, based on the per Dth rate of the allocated storage costs in the Docket No. RP12-993 settlement agreement.³⁰

25. Transco states in its August 2, 2018 data response that it utilizes bundled storage services along with other storage assets to manage customer no-notice activities and to provide assistance in daily load balancing on Transco's system. Transco states its Docket No. RP12-993 settlement agreement allocates a portion of storage costs to non-incremental transportation, to incremental transportation, and to the transportation component of its bundled storage services. Transco states that therefore, consistent with its settlement rate design, it is appropriate to include storage costs required to provide no-notice service in the cost of service for the Gateway Expansion Project. Commission policy requires that, for an NGA section 7 proceeding certifying new facilities, incremental rates should be designed to reflect only the incremental costs associated with the new facilities and should not reflect the reallocation of costs related to existing facilities or other common costs.³¹ An NGA section 7 proceeding certifying new facilities is not the proper forum to analyze the allocation of existing costs between the pipeline's existing and expansion customers because the rates for existing services can

²⁸ Exhibit P, Page 1 of 2.

²⁹ *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085 (2002). Transco explains that it has used the specified pre-tax rate of return underlying the Docket No. RP01-245 settlement rates because the more recent Docket No. RP12-993 settlement agreement was a "black box" settlement, which does not specify a rate of return.

³⁰ *Transcontinental Gas Pipe Line Co., LLC*, 145 FERC ¶ 61,205 (2013).

³¹ *Transcontinental Gas Pipe Line Co., LLC*, 141 FERC ¶ 61,091, at P 27 (2012).

only be changed in a section 4 or 5 rate proceeding. Issues regarding cost allocation,³² including whether any additional system costs should be reallocated to Transco's Gateway Expansion Project incremental rate, may be addressed in Transco's next NGA section 4 rate proceeding.³³ Therefore, the storage costs allocated to the Gateway Expansion Project incremental rate should be removed from the project's cost of service.

26. Subsequent to Transco's filing of its certificate application, the *Tax Cuts and Jobs Act* became effective January 1, 2018,³⁴ which among other things, reduced the federal corporate income tax rate from 35 percent to 21 percent. In its August 2, 2018 response to a staff data request, Transco provided an adjusted cost of service and recalculated its initial incremental rates to reflect changes in the federal tax code as per the Tax Cuts and Jobs Act. Transco's work papers show that the effect of the tax code change is a reduction in the estimated cost of service to \$15,995,391. As Transco's August 2, 2018 calculation reflects the federal tax code that will be in effect when the project goes into service, the Commission will use the revised cost of service for the purpose of establishing the initial incremental rates, to the extent Transco demonstrates that it is entitled to an income tax allowance, as further discussed below. Using a revised cost of service that reflects both the changes to the federal tax and the removal of the storage costs results in an initial incremental daily recourse reservation charge of \$0.6709 per Dth and no change to the proposed usage charge.

27. Additionally, consistent with the D.C. Circuit's holding in *United Airlines*,³⁵ the Commission has held that a double recovery of income tax costs results from granting a Master Limited Partnership (MLP) a separate income tax allowance and a pre-tax return on equity.³⁶ Accordingly, the Commission has established a policy that MLPs are

³² See *Trailblazer Pipeline Co.*, 95 FERC ¶ 61,258, at 61,903 (2001) ("rates of existing customers should not change because a pipeline builds expansion facilities to serve new customers..."); see also Certificate Policy Statement, 88 FERC ¶ 61,227, *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094.

³³ We note that on August 31, 2018, Transco filed a general section 4 rate case in Docket No. RP18-1126-000.

³⁴ Pub. L. No. 115-97, 131 Stat. 2054.

³⁵ *United Airlines, Inc. v. FERC*, 827 F.3d 122, 134, 136 (D.C. Cir. 2016) (*United Airlines*).

³⁶ *SFPP, L.P.*, Opinion No. 511-C, 162 FERC ¶ 61,228, at PP 21-30 (2018); *Enable Mississippi River Transmission, LLC*, 164 FERC ¶ 61,075, at PP 34-35 (2018) (*Enable*); see also *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, 162 FERC ¶ 61,227 (Revised Policy Statement) (providing guidance that an

generally not permitted to recover an income tax allowance in their cost of service. For those pass-through business forms that are not MLPs, the Commission continues to consider how to resolve the double recovery concern raised by *United Airlines*.³⁷ However, the Commission has clarified that a natural gas company organized as a pass-through entity, all of whose income or losses are consolidated on the federal income tax return of its corporate parent, is considered to be subject to the federal corporate income tax, and is thus eligible for a tax allowance.³⁸ For all other pass-through entities claiming an income tax allowance, parties should fully address the double-recovery concern raised by the court in *United Airlines*.³⁹

28. In its August 2, 2018 response to a staff data request, Transco states that it is not a MLP as the term is used in the Revised Policy Statement and that following the expected close of the merger in the fall of 2018 of The Williams Companies, Inc. (Williams) and Williams Partners L.P. (Williams Partners), Transco will be wholly owned by Williams, a publicly traded Delaware corporation, and become a member of a consolidated corporate return group for federal income tax purposes. Therefore, Transco states that it is appropriate to include an income tax allowance in the rates for the project.

MLP may not recover an income tax allowance), *order on reh'g*, 164 FERC ¶ 61,030 (2018)).

³⁷ Revised Policy Statement, 162 FERC ¶ 61,227 at P 3, 45; *Trailblazer Pipeline Co. LLC*, 164 FERC ¶ 61,074, at PP 30-31 (2018) (*Trailblazer*).

³⁸ See *Enable*, 164 FERC ¶ 61,075 at PP 34-35; *BP West Coast Products, LLC v. FERC*, 374 F.3d 1263, at 1289 (D.C. Cir. 2004) (disallowing an income tax allowance for an MLP's corporate unitholders, while explaining that an income tax allowance is appropriate in the cost of service of a pass-through subsidiary of a corporation "when such a subsidiary does not itself incur a tax liability but generates one that might appear on a consolidated return of the corporate group."). See also *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 83 Fed. Reg. 36,672 (July 30, 2018), FERC Stats. & Regs. ¶ 31,404 (2018), cross-reference at 164 FERC ¶ 61,031, at P 3 (clarifying that for purposes of the FERC Form No. 501-G and limited section 4 filings contemplated by the final rule "a natural gas company organized as a pass-through entity all of whose income or losses are consolidated on the federal income tax return of its corporate parent is considered to be subject to the federal corporate income tax, and is thus eligible for a tax allowance.").

³⁹ Revised Policy Statement, 162 FERC ¶ 61,227 at PP 3, 45; *Trailblazer*, 164 FERC ¶ 61,074 at P 31.

29. Furthermore, on August 31, 2018, Transco filed a general NGA section 4 rate case in Docket No. RP18-1126-000, in which Transco states that it is a wholly-owned subsidiary of Williams, a publicly traded Delaware corporation. As such, Transco asserts that it is a member of a consolidated corporate return group under Williams and is permitted an income tax allowance on a stand-alone basis under Commission policy.

30. Because Transco's rates are subject to an ongoing general NGA section 4 rate case in Docket No. RP18-1126-000, we will allow Transco to include the income tax allowance in its cost of service subject to the earlier of Transco filing a written statement affirming the close of the merger between Williams and Williams Partners or the resolution of its rate case. Consistent with Commission precedent,⁴⁰ to the extent Transco does not complete the merger described above and make the requested affirmative statement or does not resolve its rate case before it files actual tariff records setting forth the initial rates for service, those records must reflect rates recalculated to remove the proposed income tax allowance and accumulated deferred income taxes from its cost of service. If Transco fails to remove the proposed income tax allowance and accumulated deferred income taxes from the initial rates, then that filing will be rejected as not being in compliance with this order, and Transco will have to refile those records with the appropriate rates and receive Commission approval prior to going into service.

31. Under the Commission's Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed expansion capacity if the incremental rate exceeds the maximum system recourse rate.⁴¹ The Commission will approve the revised incremental charges for the project because the 100 percent load factor incremental rate of \$0.68325 (\$0.6709 recourse reservation rate plus \$0.01235 usage charge) per Dth is higher than the currently-effective Rate Schedule FT system recourse Zone 6 to 6 100 percent load factor rate of \$0.13627.⁴²

2. Fuel

32. Transco proposes to apply its generally applicable system fuel retention and electric power rates to the project. Transco asserts that, as detailed in Exhibit Z-1, operation of the project facilities is expected to result in a reduction in system fuel

⁴⁰ See *Enable*, 164 FERC ¶ 61,075 at PP 29-40 (holding that a pass-through subsidiary of an MLP cannot recover an income tax allowance for the taxes incurred by MLP unitholders, including corporate unitholders); *SFPP, L.P.*, Opinion No. 511-C, 162 FERC ¶ 61,228 at PP 21-30.

⁴¹ Certificate Policy Statement, 88 FERC at 61,746.

⁴² Transcontinental Gas Pipe Line Company, LLC, FERC NGA Gas Tariff, Fifth Revised Volume No. 1, Section 1.1.1, FT - Non-Incremental Rates, 16.0.0.

consumption (gas fuel consumption plus the gas equivalent of electric power consumption) attributable to existing customers. Thus, Transco states that the fuel benefit provided by the project to other Transco shippers supports Transco's proposal to assess the project shippers the generally applicable fuel retention and electric power rates under Rate Schedule FT. Based on the benefits attributable to the project, the Commission approves Transco's proposal to charge its generally applicable system fuel and electric power rates for transportation on the capacity associated with the project facilities.

3. Reporting Incremental Costs and Revenues

33. Section 154.309 of the Commission's regulations includes bookkeeping and accounting requirements applicable to all expansions for which incremental rates are charged. The requirements ensure that costs are properly allocated between pipelines' existing shippers and incremental expansion shippers.⁴³ Therefore, Transco must keep separate books and accounting of costs and revenues attributable to the project, as required by section 154.309 of the Commission's regulations. The books should be maintained with applicable cross-references as required by section 154.309. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.⁴⁴

4. Negotiated Rates

34. Transco proposes to provide service to its project shippers under negotiated rate agreements. Transco must file either negotiated rate agreements or tariff records setting forth the essential elements of the agreements in accordance with the Alternative Rate Policy Statement⁴⁵ and the Commission's negotiated rate policies.⁴⁶ Transco must file

⁴³ 18 C.F.R. § 154.309 (2018).

⁴⁴ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

⁴⁵ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, order granting clarification, 74 FERC ¶ 61,194, order on reh'g and clarification, 75 FERC ¶ 61,024, reh'g denied, 75 FERC ¶ 61,066, reh'g dismissed, 75 FERC ¶ 61,291 (1996), petition for review denied sub nom. *Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

⁴⁶ *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), order on reh'g and clarification,

the negotiated rate agreements or tariff records at least 30 days, but no more than 60 days, before the proposed effective date for such rates.⁴⁷

5. Non-Conforming Provisions

35. Transco states that firm transportation service agreements with the project shippers contain two deviations from Transco's Rate Schedule FT *pro forma* service agreement and requests that the Commission find that these provisions constitute permissible deviations. Transco states that the project shippers' service agreements will conform in every other respect to Transco's Rate Schedule FT *pro forma* service agreement.⁴⁸

36. In its August 2, 2018 data response, Transco provided public versions of the *pro forma* service agreements identifying the non-conforming provisions. Transco states that the agreements differ from the *pro forma* service agreements in the following ways:

- Agreement Effective Date: both agreements with the project shippers state that if the project facilities are ready for service before the tenth day of the month, then the agreement shall be effective as of such date; however, if the project facilities are ready for service after the tenth day of the month, then the agreement shall become effective as of the first day of the following month.
- Term Extension: both agreements with the project shippers state that Transco will agree to two additional five-year period extensions, provided that the project shippers make the requests at least 12 months prior to the end of terms.

37. In *Columbia*, the Commission clarified that a material deviation is any provision in a service agreement that (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (b) affects the substantive rights of the

114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

⁴⁷ Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. *See, e.g. Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014). 18 C.F.R. § 154.112(b) (2018).

⁴⁸ Application at 19.

parties.⁴⁹ The Commission prohibits negotiated terms and conditions of service that result in a shipper receiving a different quality of service than that offered other shippers under the pipeline's generally applicable tariff or that affect the quality of service received by others.⁵⁰ However, not all material deviations are impermissible. As the Commission explained in *Columbia*,⁵¹ provisions that materially deviate from the corresponding *pro forma* agreement fall into two general categories: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (b) provisions the Commission can permit without a substantial risk of undue discrimination.⁵²

38. We find that the above described non-conforming provisions constitute material deviations from Transco's Rate Schedule FT *pro forma* service agreement. We further find that these non-conforming provisions are permissible because they do not present a risk of undue discrimination, do not adversely affect the operational conditions of providing service to other shippers, and do not result in any shipper receiving a different quality of service.⁵³

39. Transco is required to file its non-conforming service agreements associated with this project with the Commission at least 30 days, but not more than 60 days, before the proposed effective date for such agreements.⁵⁴

⁴⁹ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia*).

⁵⁰ *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010).

⁵¹ *Columbia*, 97 FERC at 62,003-04.

⁵² *Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 5 (2010).

⁵³ See, e.g., *Texas Eastern Transmission, LP*, 153 FERC ¶ 61,311, at P 40 (2015), *Magnolia LNG, LLC and Kinder Morgan Louisiana Pipeline LLC*, 155 FERC ¶ 61,033, at P 45 (2016).

⁵⁴ A Commission ruling on non-conforming provisions in a certificate proceeding does not waive any future review of such provisions when the executed copy of the non-conforming agreement(s) and a tariff record identifying the agreement(s) as non-conforming are filed with the Commission, consistent with section 154.112 of the Commission's regulations. See, e.g., *Tennessee Gas Pipeline Co., L.L.C.*, 150 FERC ¶ 61,160, at P 44 n.33 (2015).

C. Environmental Impact

40. On January 2, 2018, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Gateway Expansion Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the *Federal Register* and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.⁵⁵ We received several comments in response to the NOI, including from the New Jersey Department of Environmental Protection (New Jersey DEP), the U.S. Environmental Protection Agency (EPA) and 29 members of the public. The primary issues raised by the commenters were compressor station emissions; safety; concerns that the project would result in contaminant impacts on the nearby wetlands, wildlife, and soils; and cumulative impacts.

41. To satisfy the requirements of the National Environmental Policy Act of 1969, our staff prepared an Environmental Assessment (EA) for Transco's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. All substantive comments received in response to the NOI were addressed in the EA.

42. The EA was issued for a 30-day comment period and placed into the public record on July 17, 2018. The Commission received comments on the EA from the New Jersey DEP, EPA, PSEG, seven affected landowners, and five community groups. The New Jersey DEP comments that Transco will need a New Jersey Pollutant Discharge Elimination System (NJPDES) permit for any surface water discharge from construction dewatering or hydrostatic testing and recommends that Transco contact the Bureau of Water Allocation and Well Permitting to determine the timeframe for review of the various dewatering approvals. As indicated in table 1 of the EA, Transco plans to apply for NJPDES permits in fourth quarter of 2018. In addition, Transco will follow FERC's *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures) with minor modifications, as well as a Spill Plan for Oil and Hazardous Materials.

43. Additionally, New Jersey DEP states that a parcel required for construction of the Station 303 site (Block 33, Lot 2), does not appear on the tax records and that current ownership of the parcel cannot be determined. New Jersey DEP recommends that Transco confirm the current ownership and block/lot designation of the parcel and consult with the Green Acres program to ensure the property is not encumbered. Transco states that on August 13, 2012, Transco became record owner of Block 33 Lot 2 and filed the requested information in its September 5, 2018 response to comments. Transco states that it became the record owner of Block 33, Lot 3 on November 30, 2011, and after

⁵⁵ 83 Fed. Reg. 800 (2018).

construction of the Compressor Station 303 on Lots 2 and 3, the two lots were consolidated and re-designated as Lot 3 in Block 33.

44. New Jersey DEP also requests confirmation of the existing easements for the two potential contractor yards, which the EA identified as potentially impacting land protected through the Green Acres Program.⁵⁶ New Jersey DEP requests that Transco confirm the location of the existing easements and provide a more detailed map showing the extent of activities proposed to occur along the right-of-way. Transco filed the requested information with its September 5, 2018 response to comments.

45. New Jersey DEP further recommends that Transco implement minimization measures for diesel-operated non-road equipment including limiting idling to three minutes, posting “No Idling” signs, requiring all 100+ horsepower diesel construction equipment used for more than 10 days meet the Engine Power Source Tier 4 non-road emission standards or the best available emission control technology, and mandate that all on-road diesel vehicles should use designated truck routes. On September 5, 2018, Transco filed an affirmative statement agreeing to the suggested minimization measures.

46. The EPA requests equipment lists, construction schedules, load factors and equations used to calculate estimated construction emissions for a General Conformity Applicability Analysis so they may verify the emissions estimates provided in the EA. Detailed construction emissions are provided in Transco’s Resource Report 9 filed on November 15, 2017, and Transco’s supplemental data request filed on February 14, 2018.

47. In comments on the EA, PSEG advises that any subsurface intrusive activities at the Paterson M&R and Paterson Contractor Yards 1, 2, and 3 need to be conducted in accordance with the requirements of the deed notice, that a Licensed Site Remediation Professional for the site must be notified prior to undertaking any subsurface activities at the site, and that the Remedial Action Permit may require modification. We note that the EA acknowledges that contaminated soils and groundwater are known to be present at the Paterson M&R, and that a deed restriction executed by PSEG with the New Jersey DEP requires any excavated material at the Paterson M&R must be disposed of in compliance with the deed notice.⁵⁷ A Remedial Action Permit has also been issued for the site and groundwater monitoring is ongoing.

⁵⁶ See EA at 38. The Green Acres Program prohibits the use of open space properties for other than recreation and conservation purposes.

⁵⁷ EA at 20.

48. John Duthie, Ted Glick, Judith J. Mender, Susan C. Mullins, Yervant Dermenijan, and the Sierra Club express concerns regarding the increase in flood risk, proximity of the project to existing electrical power lines, safety implications of capacity increases on the existing pipeline, and public health implications due to gas leaks. These concerns were adequately addressed in the EA in sections 1.2⁵⁸ and 8.0.⁵⁹ The project facilities must be designed, constructed, operated, and maintained in accordance with the U.S. Department of Transportation Minimum Federal Safety Standards in 49 CFR Part 192. The regulations are intended to ensure adequate protection for the public and to prevent facility accidents and failures.

49. Michael Aucott and Ted Glick, 350 NJ Rockland, and Sierra Club comment on the issues of greenhouse gases (GHG) and climate impacts. The EA discusses climate change and GHG emissions directly related to the project.⁶⁰ Construction and operational emissions associated with the project are presented in tables 6 and 7 of the EA.⁶¹ Modifications at Compressor Station 303, which include a new 33,000 horsepower electric-driven compression unit and gas cooling equipment, will not generate fuel combustion emissions. Operational emissions associated with the Roseland M&R modifications will be limited to fugitive and blowdown emissions from the additional block valve. Operational emissions associated with the modifications at the Paterson M&R will include fugitive, blowdown, and condensate storage tank emissions. Therefore, the EA concludes that the minimal emissions associated with the project would not have a significant impact on air quality.⁶² We concur.

50. Michael Aucott and Ted Glick contend that the EA did not evaluate cumulative impacts, including impacts from the Riverdale South to Market Project and the Northeast Supply Enhancement Project. Cumulative impacts are reviewed in section B.9.0 in the EA.⁶³ The EA concludes that the Riverdale South to Market Project and Northeast Supply Enhancement Project do not fall within the geographic scope of assessment for cumulative impacts analysis with the Gateway Expansion Project. The EA also concludes that the proposed project and other projects in the area would have or

⁵⁸ EA at 13.

⁵⁹ EA at 47-49.

⁶⁰ EA at 40.

⁶¹ EA at 43 and 44.

⁶² EA at 44.

⁶³ EA at 52-53.

have had minimal cumulative impacts because the other projects are predominately outside the cumulative impact area and those projects which are located within the geographic scope are likely to occur in areas that are already developed.⁶⁴ We concur.

51. Sierra Club states that the public comment period should be extended and public hearings held in the affected counties. Comments on the EA were filed between July 17, 2018 and August 20, 2018, and all comments filed were considered in conjunction with this order. We conclude that the 30-day comment period allowed adequate review time for the public to comment on the EA.

52. In a letter dated August 1, 2018, the U.S. Fish and Wildlife Service (FWS) concurs that the proposed project is not likely to adversely affect the Indiana bat and the Northern long-eared bat and would have no effect on the bog turtle. No other federally listed or proposed threatened or endangered flora or fauna under FWS jurisdiction are known to occur within the proposed project's impact area. No further consultation pursuant to the Endangered Species Act is required for the project; thus, the EA's recommended Environmental Condition 15 is not included in this order.

53. Food & Water Watch, Essex Greens Renewable Energy Campaign, Roseland Against the Compressor Station, and Sierra Club request an environmental impact statement be prepared for the project, citing concerns on need, segmentation, cumulative impacts, hydraulic fracturing, and safety and regulation of facilities. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Transco's application and supplements, including any commitments made therein, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment. As such, an environmental impact statement is not required.

54. Compliance with the environmental conditions appended to our orders is integral to ensuring that the environmental impacts of approved projects are consistent with those anticipated by our environmental analyses. Thus, Commission staff carefully reviews all information submitted. Only when satisfied that the applicant has complied with all applicable conditions will a notice to proceed with the activity to which the conditions are relevant be issued. We also note that the Commission has the authority to take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project, including authority to impose any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the order, as well as the avoidance or mitigation of unforeseen adverse environmental impacts resulting from project construction and operation.

⁶⁴ EA at 53.

55. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁶⁵

56. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, and exhibits thereto, and comments, and upon consideration of the record,

The Commission Orders:

(A) A certificate of public convenience and necessity is issued to Transco, authorizing it to construct and operate the proposed facilities, as described and conditioned herein, and as more fully described in the application and subsequent filings by the applicant, including any commitments made therein.

(B) The certificate authority issued in Ordering Paragraph (A) is conditioned on:

- (1) Transco's completion of construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to section 157.20(b) of the Commission's regulations;
- (2) Transco's compliance with all applicable Commission regulations under the NGA including, but not limited to, Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;
- (3) Transco's compliance with the environmental conditions listed in the appendix to this order; and

⁶⁵ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

- (4) Transco's filing written statements affirming that it has executed firm service agreements for volumes and service terms equivalent to those in its precedent agreement, prior to commencing construction.

(C) Transco's proposed incremental recourse rates, as revised above, are approved as the initial rates for the Gateway Expansion Project.

(D) Transco's request to utilize its system-wide fuel and electric power rates is approved.

(E) Transco shall file actual tariff records setting forth the initial rates for service on the project not less than 60 days prior to the date the Project facilities go into service.

(F) Transco shall notify the Commission's environmental staff by telephone or e-mail of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Transco. Transco shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(G) Transco must file no earlier than 60 days and no later than 30 days the in-service date of the proposed facilities an executed copy of the non-conforming agreements reflecting the non-conforming language and a tariff record identifying these agreements as nonconforming agreements consistent with section 154.112 of the Commission's regulations.

(H) Transco shall keep separate books and accounts of costs attributable to the proposed incremental services, as described above.

By the Commission. Commissioner LaFleur is concurring with a separate statement attached.

Commissioner Glick is dissenting in part with a separate statement attached.

Commissioner McIntyre is not voting on this order.

Commissioner McNamee is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix – Environmental Conditions

1. Transcontinental Gas Pipe Line Company, LLC (Transco) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Transco must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the Order, and take whatever steps are necessary to ensure the protection of environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order;
 - b. stop-work authority; and
 - c. the imposition of any additional measures deemed necessary to ensure continued compliance with the intent of the conditions of the Order as well as the avoidance or mitigation of unforeseen adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, Environmental Inspectors (EIs), and contractor personnel would be informed of the EI's authority and have been or would be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Transco shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Transco's exercise of eminent domain authority granted under the Natural Gas Act section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Transco's right of eminent domain granted under the Natural Gas Act section 7(h) does not authorize them to increase the size of their natural gas facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Transco shall file with the Secretary detailed alignment maps and aerial photographs at a scale not smaller than 1: 6,000 identifying all facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by the Commission's *Upland Erosion Control, Revegetation and Maintenance Plan* and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **At least 60 days before construction begins,** Transco shall file an Implementation Plan with the Secretary for review and written approval by the

Director of OEP. Transco must file revisions to their plan as schedules change. The plan shall identify:

- a. how Transco will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
- b. how Transco will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
- c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
- d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
- e. the location and dates of the environmental compliance training and instructions the company will give to all personnel involved with construction and restoration (initial and refresher training as the Project progresses and personnel change);
- f. the company personnel (if known) and specific portion of the company's organization having responsibility for compliance;
- g. the procedures (including use of contract penalties) the company will follow if noncompliance occurs; and
- h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (i) the completion of all required surveys and reports;
 - (ii) the environmental compliance training of onsite personnel;
 - (iii) the start of construction; and
 - (iv) the start and completion of restoration.

7. Transco shall employ at least one EI for the Project. The EI shall be:

- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
- b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
- c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
- d. a full-time position, separate from all other activity inspectors;

- e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports
8. Beginning with the filing of its Implementation Plan, Transco shall file updated status reports for the project with the Secretary on a monthly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Transco's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. description of the corrective actions implemented in response to all instances of noncompliance;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by the company from other federal, state, or local permitting agencies concerning instances of noncompliance.
9. Transco must receive written authorization from the Director of OEP **before commencing construction of any project facilities**. To obtain such authorization, Transco must file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. Transco must receive written authorization from the Director of OEP **before placing the modified project facilities into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the areas affected by the project are proceeding satisfactorily.

11. **Within 30 days of placing the authorized facilities in service**, Transco shall file an affirmative statement with the Secretary, certified by a senior company official that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or identifying which of the conditions in the Order Transco has complied with or will comply with. This statement shall also identify any areas affected by the Project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. **Prior to construction**, Transco shall complete consultations with water suppliers for the community and non-community Wellhead Protection Areas that overlap the Paterson Meter and Regulator (M&R) and contractor yards, Compressor Station (CS) 303, Eagle Rock Yard, and Livingston Mall Yard and file with the Secretary, for review and written approval by the Director of the OEP, any water supplier-recommended mitigation that Transco will implement during construction. For any recommended mitigation Transco does not plan to implement, Transco shall provide justification why the mitigation is not needed.
13. **Prior to any use or modification of the Whippany Yard**, Transco shall consult with the U.S. Environmental Protection Agency (as the lead agency for the Sharkey Landfill remediation), and file the results of this consultation, along with any proposed mitigation measures, with the Secretary, for review and written approval by the Director of the OEP.
14. **Prior to any use or modification of the Whippany Yard**, Transco shall file with the Secretary, for review and written approval by the Director of the OEP, verification of the locations of existing groundwater monitoring wells at the Whippany Yard, and measures Transco will use to protect these wells from damage or destruction during construction activities.
15. Transco shall not begin construction of facilities and/or use of all staging, storage, or temporary work areas and new or to-be improved access roads until:
 - a. Transco files with the Secretary:
 - i. reports, studies, or plans of additional cultural resources surveys;
 - ii. site-specific avoidance and/or treatment plan(s), as required; and
 - iii. comments on reports and plans from the New Jersey State Historic Preservation Office;
 - b. the Advisory Council on Historic Preservation is afforded an opportunity to comment if historic properties would be adversely affected; and
 - c. the FERC staff reviews and the Director of OEP approves the cultural resources reports and plans, and notifies Transco in writing that avoidance

and/ or treatment measures, as required, may be implemented and/or construction may proceed.

All materials filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **“CUI//PRIV – DO NOT RELEASE”**. Additionally, a letter must be filed public that states that these items have been filed PRIV.

16. Transco shall file noise surveys with the Secretary **no later than 60 days** after placing the modified CS 303 in service. If a full load condition noise survey is not possible, Transco shall provide an interim survey at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of all of the equipment at the modified CS 303, under interim or full horsepower load conditions, exceeds a day-night sound level of 55 A-weighted decibels at any nearby noise sensitive areas, Transco shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. Transco shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP18-18-000

(Issued December 12, 2018)

LaFLEUR, Commissioner, *concurring*:

Today's order grants Transcontinental Gas Pipe Line Company, LLC's (Transco) request for authorization to construct and operate the Gateway Expansion Project.¹ I believe the project is in the public interest after carefully balancing the need for the project and its environmental impacts. For the reasons discussed below, I concur.

The proposed Gateway Expansion Project will provide up to 65,000 dekatherms per day (Dth/day) of firm transportation service for PSEG Power LLC and UGI Energy Services to serve their industrial, commercial and residential customers.² I believe it is reasonably foreseeable that the gas being transported will be burned and that downstream greenhouse gas (GHG) emissions will result from burning that gas.³

¹ *Transcontinental Gas Pipe Line Company, LLC*, 165 FERC ¶ 61,221 (2018).

² Transco's July 25, 2018 Response to Commission Staff's July 13, 2018 Data Request at 2 (explaining that UGI Energy Services intends to use the 11,000 Dth/day to support the daily consumption of commercial and industrial customers, and PSEG Power LLC will use its 54,000 Dth/day for general system supply).

³ See *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520, 549 (8th Cir. 2003) (*Mid States*). In *Mid States*, the Court concluded that the Surface Transportation Board erred by failing to consider the downstream impacts of the burning of transported coal. Even though the record lacked specificity regarding the extent to which the transported coal would be burned, the Court concluded the nature of the impact was clear.

The Project's Environmental Assessment (EA) quantified the direct GHG emissions from the Project's construction and operation,⁴ but the EA did not consider the downstream emissions impacts.⁵ To address my concerns about the failure to consider downstream emissions impacts in this proceeding, I have myself considered the downstream GHG emissions as part of my public interest determination. Using a methodology developed by the Environmental Protection Agency to estimate the downstream GHG emissions from the Gateway Expansion Project, and assuming as an upper-bound estimate that all of the gas to be transported is eventually combusted, 65,000 Dth/d of natural gas service would result in the emission of approximately 1.258 million metric tons per year of downstream CO₂ emissions. This figure represents a 1.1 percent increase in GHG emissions within New Jersey⁶ and 0.02 percent increase nationally.⁷

I acknowledge that the disclosure of state and national comparison data is only the first step to assist the Commission in ascribing significance to a given rate or volume of GHG emissions. However, to date, the Commission has not identified a framework for reaching a significance determination. The primary argument against using the Social Cost of Carbon metric is that monetized climate damages does not readily lend itself to the Commission's environmental review of natural gas facilities.⁸ I am confident that, given the importance of this issue, the Commission could find a way to adapt and apply a metric such as the Social Cost of Carbon to reach a significance threshold determination. The concern that making a significance determination on downstream GHG emissions would be difficult does not relieve the Commission of its responsibility to work on this issue. The Commission makes challenging determinations on quantitative and qualitative issues in many other areas of our work.⁹

⁴ EA at 39-44 & Tables 6 & 7.

⁵ This decision is consistent with the Commission's policy, with which I disagree, announced in *New Market* limiting the disclosure and consideration of downstream and upstream GHG emissions impacts in our project review. See *Dominion Transmission Inc.*, 163 FERC ¶ 61,128 (2018) (LaFleur, Comm'r, *dissenting in part*).

⁶ U.S. Energy Information Administration, 2018
<https://www.eia.gov/environment/emissions/state/>

⁷ U.S. Environmental Protection Agency, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2016*, (April 2018).

⁸ https://www.epa.gov/sites/production/files/2016-12/documents/social_cost_of_carbon_fact_sheet.pdf

⁹ Many of the core areas of the Commission's work have required the development

Using the approach I originally articulated in *Broad Run*,¹⁰ I find the Gateway Expansion Project to be in the public interest.¹¹ I share many of the concerns voiced by Commissioner Glick in his dissent. The Commission must do its best to take climate

of analytical frameworks, often a combination of quantitative measurements and qualitative assessments, to fulfill the Commission's responsibilities under its broad authorizing statutes. This work regularly requires that the Commission exercise judgment, based on its expertise, precedent, and the record before it. For example, to help determine just and reasonable returns on equity (ROEs) under the Federal Power Act, Natural Gas Act, and Interstate Commerce Act, the Commission identifies a proxy group of comparably risky companies, applies a discounted cash flow method to determine a range of potentially reasonable ROEs (i.e., the zone of reasonableness), and then considers various factors to determine the just and reasonable ROE within that range. *See also, e.g., Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007) (establishing Commission regulations and policy for reviewing requests for transmission incentives); *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (requiring, among other things, the development of regional cost allocation methods subject to certain general cost allocation principles); *BP Pipelines (Alaska) Inc.*, Opinion No. 544, 153 FERC ¶ 61,233 (2015) (conducting a prudence review of a significant expansion of the Trans Alaska Pipeline System). I also note that the Commission is currently actively considering a broad topic – resilience – whose scope and complexity might similarly require the development of new analytical frameworks for conducting the Commission's work.

¹⁰ *Tennessee Gas Pipeline Company*, 163 FERC ¶ 61,190 (2018) (LaFleur, Comm'r, *concurring*).

¹¹ *See RH enerytrans, LLC*, 165 FERC ¶ 61,218 (2018) (LaFleur, Comm'r, *concurring*) ("I am trying to move beyond my disagreement with the Commission's approach to its environmental review of proposed pipeline projects, and base my public interest determination on the facts in the record—even ones not discussed in our environmental documents or in the certificate order."). *See also Texas Eastern Transmission, LP*, 165 FERC ¶ 61,132 (2018) (LaFleur, Comm'r, *concurring*); and *PennEast Pipeline Company, LLC.*, 164 FERC ¶ 61,098 (2018) (LaFleur, Comm'r, *concurring in part and dissenting in part*).

change impacts into account in our proceedings. I appreciate that there is work to do to address this issue, but I believe it is work that must be done.

For all of these reasons, I concur.

Cheryl A. LaFleur
Commissioner

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Company, LLC

Docket No. CP18-18-000

(Issued December 12, 2018)

GLICK, Commissioner, *dissenting in part*:

In today's order, the Commission authorizes Transcontinental Gas Pipe Line Company, LLC's (Transco) proposed Gateway Expansion Project, which will permit Transco to provide an additional 65,000 dekatherms per day (Dth/d) of firm transportation service to existing interconnections in New Jersey to meet shippers' incremental natural gas supply needs.¹ In doing so, the Commission again refuses to consider whether the Project's contribution to climate change from greenhouse gas (GHG) emissions would be significant, even though it quantified the Project's emissions from construction and operation. Moreover, the Commission fails to consider the Project's contribution to climate change from upstream and downstream GHG emissions. The Commission's refusal to evaluate and consider the Project's harm from its contribution to climate change falls well short of our obligations under the Natural Gas Act (NGA)² and the National Environmental Policy Act (NEPA).³ Because I believe the Commission cannot find that the Project is in the public interest without evaluating and determining the significance of this impact based on information in the record, I respectfully dissent in part.⁴

¹ *Transcontinental Gas Pipe Line Company, LLC*, 165 FERC ¶ 61, 221, at P 4 (2018) (Certificate Order).

² 15 U.S.C. 717f (2012).

³ National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852.

⁴ Section 7 of the NGA requires that, before issuing a certificate for new pipeline construction, the Commission must find both a need for the pipeline and that, on balance, the pipeline's benefits outweigh its harms. 15 U.S.C. § 717f (2012). Furthermore, NEPA requires the Commission to take a "hard look" at the environmental impacts of its decisions. *See* 42 U.S.C. § 4332(2)(C)(iii); *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983). This means that the Commission must consider and discuss the significance of the harm from a pipeline's contribution to climate change by actually evaluating the magnitude of the pipeline's environmental impact. Doing so enables the Commission to compare the environment before and after the proposed

The Commission maintains that it need not consider the significance of the Project's contribution to climate change from increased GHG emissions because—the Commission claims—it simply cannot do so.⁵ We know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane, which can be released in large quantities through the production and the consumption of natural gas. It is therefore critical that the Commission carefully consider the Project's contribution to climate change, both in order to fulfill NEPA's requirements and to determine whether the Project is in the public interest under the NGA.

In the Project's EA, the Commission quantified the Project's GHG emissions from construction and operation⁶ and acknowledged that GHG emissions due to human activity “endanger public health and welfare by contributing to human-induced global

federal action and factor the changes into its decisionmaking process. *See Sierra Club v. FERC*, 867 F.3d 1357, 1374 (D.C. Cir. 2017) (Sabal Trail) (“The [FEIS] needed to include a discussion of the ‘significance’ of this indirect effect.”); 40 C.F.R. § 1502.16 (a)–(b) (An agency's environmental review must “include the environmental impacts of the alternatives including the proposed action,” as well as a discussion of direct and indirect effects *and their significance*.) (emphasis added)). Today's decision and the record omit any meaningful discussion of the Project's contribution to climate change. That omission renders the Commission's order arbitrary and capricious and not the product of reasoned decisionmaking.

⁵ Gateway Expansion Project Environmental Assessment (EA) at 55 (stating, without further explanation, that there is “no standard methodology” to determine how a project's contribution to GHG emissions “would translate into physical effects on the global environment”); Certificate Order, 165 FERC ¶ 61,221 at P 49 (noting that the Commission received numerous comments related to GHG emissions and climate impacts and that the EA, rather than the Certificate Order, discusses climate change). Commenters specifically challenge the adequacy of the environmental analysis in the EA of the Project's climate change impact, arguing that the Commission should use the Social Cost of Carbon to “convert emissions estimates to quantifiable harms.” Michael Aucott Aug. 9, 2018 Comments at 1–3. Neither the EA nor the Certificate Order include a reasoned response to this challenge or address the significance of the Project's climate change impact, and this omission renders the Commission's decision arbitrary and capricious and not the product of reasoned decisionmaking.

⁶ EA at 39–44 & Tables 6–7 (estimating the Project's GHG emissions from construction and operation).

climate change.”⁷ But the Commission nevertheless refuses to consider whether the Project’s contribution to climate change from these emissions is significant. Additionally, the Commission ignores the Project’s reasonably foreseeable downstream GHG emissions, even though Transco explains that “the additional firm natural gas transportation service on Transco’s mainline is intended for its shippers’ incremental supply needs beginning with the 2020/2021 winter heating season.”⁸ The Commission also gives no consideration to whether the Project will lead to an increase in upstream GHG emissions from additional production. The Commission adopts an overly narrow and circular definition of indirect effects⁹ and disregards the Project’s central purpose—to facilitate additional natural gas consumption.¹⁰ The Commission cannot ignore the fact that adding firm transportation capacity is likely to “spur demand” for natural gas¹¹

⁷ *Id.* at 40.

⁸ Certificate Order, 165 FERC ¶ 61,221 at P 4; *see also* Transco Certificate Application at 15 (The Project is designed to provide shippers “access to incremental supplies of natural gas” and enable shippers to meet growing market needs, including demands of “institutional, commercial, and industrial customers.”); PSEG Dec. 21, 2017 Comments at 1–2.

⁹ *See San Juan Citizens All. et al. v. U.S. Bureau of Land Mgmt.*, No. 16-CV-376-MCA-JHR, 2018 WL 2994406, at *10 (D.N.M. June 14, 2018) (holding that it was arbitrary for the Bureau of Land Management to conclude “that consumption is not ‘an indirect effect of oil and gas production because production is not a proximate cause of GHG emissions resulting from consumption’” as “this statement is circular and worded as though it is a legal conclusion”). The Commission must use its “best efforts” to identify and quantify the full scope of the environmental impacts and, as the U.S. Court of Appeals for the District of Columbia found in *Sierra Club v. FERC*, educated assumptions are inevitable in the process of emission quantification. *See* 867 F.3d 1357, 1374 (D.C. Cir. 2017) (*Sabal Trail*).

¹⁰ *See supra* note 8.

¹¹ *Barnes v. U.S. Dep’t of Transp.*, 655 F.3d 1124, 1138 (9th Cir. 2011) (holding that it “is completely inadequate” for an agency to ignore a project’s “growth inducing effects” where the project has a unique potential to spur demand); *id.* at 1139 (distinguishing *City of Carmel-by-the-Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142 (9th Cir. 1997), which the majority relies on in today’s order) (“[O]ur cases have consistently noted that a new runway has a unique potential to spur demand, which sets it apart from other airport improvements, like changing flight patterns, improving a terminal, or adding a taxiway, which increase demand only marginally, if at all.”); *id.* at 1139 (“[E]ven if the stated purpose of [a new airport runway project] is to increase safety and efficiency, the

and, for that reason, the Commission must at least examine the effects that an expansion of pipeline capacity might have on consumption and production.¹² Indeed, if a proposed pipeline neither increases the supply of natural gas available to consumers nor decreases the price that those consumers would pay, it is hard to imagine why that pipeline would be “needed” in the first place.

Even where exact information regarding the source of the gas to be transported and its end use is not available, the Commission will often be able to produce comparably useful information based on reasonable forecasts of the GHG emissions associated with production and consumption.¹³ Forecasting environmental impacts is a regular component of NEPA reviews and a reasonable estimate may inform the federal decisionmaking process even where the agency is not completely confident in the results of its forecast.¹⁴ Similar forecasts can play a useful role in the Commission’s evaluation of the public interest, even in those instances when the Commission must make a number

agencies must analyze the impacts of the increased demand attributable to the additional runway as growth-inducing effects.”).

¹² As the United States Court of Appeals for the Eighth Circuit explained in *Mid States Coal. for Progress v. Surface Transp. Bd.*—a case that also involved the downstream emissions from new infrastructure for transporting fossil fuels—when the “nature of the effect” (end-use emissions) is reasonably foreseeable, but “its extent is not” (specific consumption activity producing emissions), an agency may not simply ignore the effect. 345 F.3d 520, 549 (8th Cir. 2003).

¹³ NEPA, after all, does not require exact certainty; instead, it requires that the Commission engage in reasonable forecasting and estimation of possible effects of a major federal action where doing so would further the statute’s two-fold purpose of ensuring that the relevant agency will “have available, and will carefully consider, detailed information concerning significant environmental impacts” and that this information will also be “available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)); *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1310 (2014).

¹⁴ In determining what constitutes reasonable forecasting, it is relevant to consider the “usefulness of any new potential information to the decisionmaking process.” *Sierra Club v. U.S. Dep’t of Energy*, 867 F.3d 189, at 198 (D.C. Cir. 2017) (citing *Pub. Citizen*, 541 U.S. at 767).

of assumptions in its forecasting process.¹⁵

Quantifying the Project's GHG emissions is a necessary, but not sufficient, step in meeting the Commission's obligations to consider the Project's environmental effects associated with climate change. NEPA and the NGA's public interest standard require the Commission to consider not the GHG emissions themselves but the resulting environmental impact.¹⁶ The Commission maintains the position that it need not determine whether the Project's contribution to climate change is significant, relying instead on a vague assertion that "[t]here is no standard methodology" to determine whether the Project's GHG emissions "would translate into physical effects on the global environment."¹⁷ This bald conclusion is no substitute for fulfilling the Commission's responsibility to carefully—and meaningfully—consider the public interest in the Project.

Under NEPA, the Commission must consider the harm from the Project's GHG emissions when the emissions are direct and indirect effects of the Project.¹⁸ Moreover, in *Sabal Trail*, the court left no room to question that GHG emissions from the downstream combustion of natural gas can be "an indirect effect of authorizing" a pipeline project,

¹⁵ In comments submitted in the Commission's pending review of the natural gas certification process, the Environmental Protection Agency identified a number of tools the Commission can use to quantify the reasonably foreseeable "upstream and downstream GHG emissions associated with a proposed natural gas pipeline." These include "economic modeling tools" that can aid in determining the "reasonably foreseeable energy market impacts of a proposed project." U.S. Environmental Protection Agency, Comments, Docket No. PL18-1-000, at 3–4 (filed June 21, 2018) (explaining that the "EPA has emission factors and methods" available to estimate GHG emissions—from activities upstream and downstream of a proposed natural gas pipeline—through the U.S. Greenhouse Gas Inventory and the Greenhouse Gas Reporting Program); *see Certification of New Interstate Natural Gas Facilities*, Notice of Inquiry, 163 FERC ¶ 61,042 (2018).

¹⁶ NEPA requires the Commission to reach a determination regarding the significance of the Projects' indirect effects from upstream and downstream GHG emissions. Further, under section 7 of the NGA, the Commission must consider those harms as part of its determination whether the Projects are in the public interest. *See Florida Southeast Connection, LLC*, 164 FERC ¶ 61,099, at 2–3, 5–8 (Glick, Comm'r, *dissenting*).

¹⁷ EA at 55.

¹⁸ 40 C.F.R. § 1508.8 (defining direct effects and indirect effects).

which the Commission can reasonably foresee, and which the agency has a legal authority to consider and mitigate.¹⁹ As the court explained, section 7 of the NGA requires the Commission to balance “‘the public benefits [of a proposed pipeline] against the adverse effects of the project,’ including adverse environmental effects.”²⁰ If a pipeline’s adverse effects outweigh its public benefits, the project is not in the public interest and the Commission must deny the section 7 certificate.²¹ As relevant here, that means that the section 7 balancing test must incorporate an analysis of the environmental harms, including those caused by a proposed pipeline’s contribution to climate change. The Commission’s failure to consider the harm from the Project’s GHG emissions under NEPA and in its public interest determination reveals a stubborn adherence to the views that the *Sabal Trail* court rejected. It is also an empty excuse for ignoring calls for the Commission to use the Social Cost of Carbon to assess the Project’s contribution to climate change.²²

The Commission has the tools to determine the Project’s harm from its contribution to climate change due to incremental GHG emissions. This is precisely what the Social Cost of Carbon delivers. By measuring the long-term damage done by a ton of carbon dioxide, it provides a method for linking GHG emissions to particular climate impacts, thereby providing both the Commission and the public with the “hard look” required to assess the magnitude of a proposed project’s impact on the climate. Especially when it comes to a global problem like climate change, a measure for translating a discrete project’s climate impacts into concrete and comprehensible terms can play a useful role in the NEPA process by putting the harms caused by the project in terms that are readily accessible for both agency decisionmakers and the public at large.

As in almost every aspect of the Commission’s regulation—from reviewing environmental and safety impacts to calculating expected rates of return on investment dollars—the Commission can manage uncertainty through probability and statistical

¹⁹ *Sabal Trail*, 867 F.3d at 1374 (citing the Commission’s authority, pursuant to the NGA, to “attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require,” 15 U.S.C. 717f(e)).

²⁰ *Sabal Trail*, 867 F.3d at 1373 (quoting *Myersville Citizens for a Rural Cmty. v. FERC*, 783 F.3d 1301, 1309 (D.C. Cir. 2015)).

²¹ *See id.* (explaining that the Commission may “deny a pipeline certificate on the ground that the pipeline would be too harmful to the environment”).

²² *See supra* note 5 and accompanying text.

analyses. In this same vein, “NEPA does not demand that every federal decision be verified by the reduction to mathematical absolutes for insertion into a precise formula.”²³ The fact that the Commission may not know the exact magnitude of the Project’s contribution to climate change is no excuse for assuming the impact is zero. Instead, the Commission must engage in a case-specific inquiry into the reasonably foreseeable effects and estimate the potential impact—making assumptions where necessary—and then give that estimate the weight it deserves.

The Commission has recognized that a variety of environmental impacts are best considered qualitatively but once again provides no answer for why the Commission—as the agency with both the mandate and technical expertise to consider the public interest in the Project—cannot use a quantitative measure of the Project’s contribution to climate change as input to making a qualitative determination of its significance.²⁴ In effect, the Commission maintains that it has satisfied its obligation under NEPA to consider the harm caused by the Project’s contribution to climate change by providing a generic, qualitative discussion that concludes it cannot accurately assess the impacts of GHG emissions generally. The reality is the Commission has still failed to make an explicit determination of whether the harm associated with the Project’s contribution to climate change is significant. In order to satisfy NEPA, the environmental review documents must both disclose direct and indirect impacts, which can include quantitative and

²³ *Sierra Club v. Lynn*, 502 F.2d 43, 61 (5th Cir. 1974).

²⁴ As the Environmental Protection Agency has explained, the Commission may use estimates of the Social Cost of Carbon “for project analysis when [the Commission] determines that a monetary assessment of the impacts associated with the estimated net change in GHG emissions provides useful information in its environmental review or public interest determination.” United States Environmental Protection Agency, Comments, Docket No. PL18-1-000, at 4–5 (filed June 21, 2018). In addition, the Council on Environmental Quality recognized under a prior administration that monetizing an impact is appropriate in the NEPA document, if doing so is necessary for an agency to fully evaluate the environmental consequences of its decisions. *See* CEQ, Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews at 32-33 (Aug. 1, 2016), https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/nepa_final_ghg_guidance.pdf.

qualitative considerations, and disclose their significance.²⁵

To support this directive, CEQ regulations expressly outline a framework for determining whether the Project’s impacts on the environment will be considered significant—and this CEQ framework requires considerations of both *context* and *intensity*, noting that significance of an action must be analyzed in several contexts.²⁶ The Commission can use these factors to develop a framework to consider the significance of the Project’s impact. Its failure to do so is no excuse for neglecting to consider the Project’s harm from its contribution to climate change.

* * *

Climate change poses an existential threat to our security, economy, environment, and, ultimately, the health of individual citizens. Unlike many of the challenges that our society faces, we know with certainty what causes climate change: It is the result of GHG emissions, including carbon dioxide and methane—which can be released in large quantities through the production and the consumption of natural gas. Congress determined under the NGA that no entity may transport natural gas interstate, or construct or expand interstate natural gas facilities, without the Commission first determining the activity is in the public interest. This requires the Commission to find, on balance, that a project’s benefits outweigh the harms, including the environmental impacts from climate change that result from authorizing additional transportation. Accordingly, it is critical that, as an agency of the federal government, the Commission comply with its statutory responsibility to document and consider how its authorization of a natural gas pipeline facility will lead to the emission of GHGs, contributing to climate change.

For these reasons, I respectfully dissent in part.

Richard Glick
Commissioner

²⁵ 40 C.F.R. § 1502.16.

²⁶ *Id.* § 1508.27 (setting forth a list of factors agencies should rely on when determining whether a project’s environmental impacts are “significant” considering both “context” and “intensity”); *id.* (“‘Context’ . . . means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality.”); *id.* (“‘Intensity’ . . . refers to the severity of the impact, . . . [including t]he degree to which” it affects considerations including “public health or safety” and the environment).